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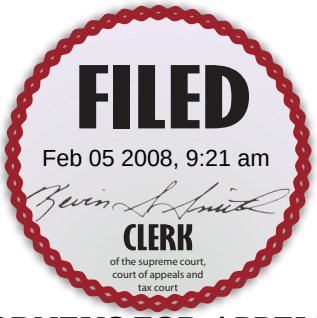

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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MATTER OF: B.G. and L.G., minors,	)	
	)	
JOHN GOEBEL,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 45A03-0702-JV-87
	)	
LAKE COUNTY OFFICE OF FAMILY & CHILDREN and LAKE COUNTY COURT APPOINTED SPECIAL ADVOCATE,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Mary Beth Bonaventura, Senior Judge
Cause No. 45D06-0503-JT-44 and 45D06-0503-JT-43

February 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

John Goebel, Sr. (Father) appeals the involuntary termination of his parental rights with respect to his minor daughters, B.G. and L.G., presenting the following restated issues for review: Was the evidence sufficient to prove there is a reasonable probability that the conditions resulting in the children's removal from Father's care still exist or that continuation of the parent-child relationship poses a threat to the children's well-being?

We affirm.

The facts favorable to the judgment are that Father and his wife, Grace (Mother), had two children; B.G. was born in September 1995 and L.G. was born in January 1998. In October 2002, Mother noticed a foul-smelling discharge emanating from B.G.'s vagina, but did nothing about it. Mother noticed it again five months later and took B.G. to Dr. Clark Kramer, a pediatrician, for examination. Dr. Kramer observed lesions and bruising on B.G.'s genitalia and referred her to Dr. Mary Vanko, a gynecologist, for further examination.

Dr. Vanko observed bruising on B.G.'s thighs and genitalia and decided to examine B.G. under anesthesia for possible sexual abuse. Following the examination, Dr. Vanko determined that B.G. had genital warts, a gaping vaginal introitus, a gaping rectum, no hymenal ring, and a red, friable cervix. She also noted that the aforementioned bruises were of various ages, meaning they had been sustained at

different times. Afterwards, Dr. Vanko called the Lake County Department of Child Services (DCS) to report her conclusion that B.G. had suffered sexual abuse.

B.G. was interviewed by social worker Carolyn Davis at the hospital and asked to identify the person who had molested her. She identified Father. Davis asked, "Your father did this?" *Appellee's Appendix* at 17. B.G. reiterated, "My father did this." *Id*. Mother, who was standing nearby, responded, "[B.G.], no, your dad did not do this." *Id*. Mother went "immediately" to the phone and called Father. *Id*. Davis heard her say to Father, "[B.G.] has said that it's you. I know it was not you. I know you're telling the truth." *Id*. B.G. began crying and Davis told Mother she should end the phone call and comfort her daughter. Mother hung up the phone with Father and went back to B.G., saying, "It's going to be okay [B.G.]. It's going to be okay, but your dad did not do this." *Id*. at 17-18.

Detective John Gruska of the Lake County Sheriff's Department interviewed Mother and Father about B.G.'s injuries. They claimed B.G.'s injuries were caused by L.G. inserting a toy dragon into B.G.'s vagina. Detective Gruska was told that B.G. attended a local school and was bussed to a daycare facility after school was over for the day, where she stayed until her parents picked her up. Father and Mother claimed that, except for daycare and school, they were B.G.'s sole caregivers. Detective Gruska interviewed school, daycare, and bus personnel and found no evidence of sexual abuse by anyone at those places.

On May 6, 2003, the DCS filed a petition alleging L.G. and B.G. were Children in Need of Services (CHINS). The girls were immediately removed from the Goebels'

home and placed in foster care. Dr. Kalyai Gopal, a clinical psychologist, began treating B.G. in June 2003. B.G. repeatedly told Dr. Gopal that Father sexually abused her, describing incidents including oral, rectal, and vaginal penetration by Father using his hand, penis, and various objects. B.G.'s description of those incidents was consistent with the injuries noted during her physical examination by Dr. Vanko. B.G. and L.G. both told Dr. Gopal that Mother told them not to discuss the abuse because it was "family secrets" and that if B.G. talked about it, Father would go to jail. *Appellee's Appendix* at 5. Dr. Gopal testified,

> [B.G.] said, daddy hurt me and I asked her, where. And she said rubbing me and where, down here and she was showing and pointing to her vagina. Five times in the bathroom while she's taking a bath and, uh, I asked her what happened and she said dad and he put soap rubbing me in a private spot. He stopped doing it in, like, five minutes.

Id. at 11. B.G. told Dr. Gopal that she wanted to tell the judge that her dad should not hurt her anymore and "[m]y mom should take me to school and never leave me alone with my dad." *Id*. at 13. B.G. told Dr. Gopal that Father "put his privates inside," *id*., that it happened "about fifty times," *id*., and that B.G. was six years old the first time it happened. Dr. Gopal stressed to B.G. the importance of not identifying the wrong person and asked "a few times" about the identity of the perpetrator. *Id*. B.G. was "very adamant" that it was "only daddy." *Id*. Over the four-month period that B.G. spoke with Dr. Gopal about the molestations, "she was very consistent" in identifying Father as her molester. *Id*. at 15.

Ellen Wilkerson was a Family Case Manager at DCS who worked with B.G. B.G. told Wilkerson she did not want to live with Mother if Father was living there, and that

she wanted to live with only Mother because Father gave her bruises. The case plan called for Mother to devise a plan to keep the girls safe and, most especially, protect them from the perpetrator of the molestations. Father's case plan called for him to take parenting classes and to participate in counseling "to address issues of being a sexual perpetrator." *Transcript* at 223. Father attended the counseling sessions but steadfastly denied molesting B.G. Thus, "the issues of being a sexual perpetrator were never addressed." *Id*. at 225-26. Mother's task was to provide a safe environment for her daughters, one that was free from the threat of sexual molestation. The plan or plans she submitted were designed to limit the children's access to individuals at B.G.'s school, day care, and on her bus, because Mother and Father continued to proclaim Father's innocence, and therefore maintained that someone at those locations must have been the perpetrator. Ultimately, Mother told Darilyn Perry, a caseworker, that she would do anything to protect her children except divorce Father.

At some point, based on the parents' inability to address the issues identified by the DCS and based upon the girls' improvement while living with the foster parent, the case plan goal for the girls changed from reunification with the parents to termination of Father's and Mother's parental rights and adoption by the foster parent. Following a trial, on December 31, 2006, Father's and Mother's parental rights were terminated and the foster parent was identified as the prospective adoptive parent. Father appeals the termination of his parental rights.

Our court has deemed the involuntary termination of parental rights as "the most extreme sanction that a court can impose." *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App.

1999), *trans. denied*, *cert. denied*, 534 U.S. 1161 (2002). For this reason, termination is viewed as a last resort, to be pursued only when all other reasonable efforts have failed. *In re L.S.*, 717 N.E.2d 204. Parental rights are not terminated in order to punish the parents, but rather to protect their children. *Id*. Thus, although parental rights are of constitutional dimension, they may be terminated when the parents cannot or will not fulfill their parental responsibilities. *Id*.

In order to effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements set out in Ind. Code Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2007 1st Regular Sess.). Those elements are:

> (B) there is a reasonable probability that:
>
> > (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> >
> > (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

The issues presented by Father challenge the sufficiency of evidence supporting elements (b)(2)(B)(i) and (b)(2)(B)(ii) above. In determining whether sufficient evidence supports the termination of parental rights, as is the case with other sufficiency challenges, we neither reweigh the evidence nor judge the credibility of witnesses. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). We consider only the evidence that supports the judgment and the reasonable inferences

to be drawn therefrom. *Id*. We will not set aside an order terminating parental rights unless it is clearly erroneous. *Id*.

Father contends the evidence was not sufficient to prove that there is a reasonable probability the conditions resulting in the children's removal from his care have not been remedied. The gist of his argument in support of this contention can be gleaned from the following excerpt from his appellate brief:

> The Court found and stated in the Termination Order that the best interest of the children were served by the terminating of the parent-child relationship, because the parents' denial of father's responsibility evidences a present and future danger to their children. However, the DCS failed to prove in the testimony of their witnesses that Mr. Goebel ever sexually abused B.G. Furthermore, the Court stated in its finding, and testimony presented proved that B.G. made up five (5) different stories, regarding the sexual abuse. … [T]he Court failed to take into account, that Mr. Goebel has never been found guilty of abusing B.G., in addition, during therapy he always denied sexually abusing his daughter.

Appellant's Brief at 10-11. Reduced to its essence, Father's argument is that the DCS failed to establish that he is the person who molested B.G.

Father acknowledges that someone molested B.G. The results of her physical examinations indicate that she was repeatedly molested over a period of time, in a variety of ways. Father and Mother admitted that no one had regular access to the girls except for school personnel, daycare personnel, and individuals on the bus that transported them from one place to the other. A police investigation concluded there was absolutely no evidence that anyone at those locations molested B.G, who consistently claimed from the beginning that her father was the perpetrator. She described acts committed by him that were plausible with respect to time and opportunity and were consistent with the injuries

observed by B.G.'s attending physicians. B.G.'s behavior and mental health improved markedly after her contact with Father ceased.

Father's observation that B.G. told five different stories about her abuser refers to testimony from Mother, who claimed that B.G. told her five stories of how the molestations occurred, and identified three other children and a fictitious teacher as the perpetrator. Several of the trial court's findings of fact indicate to us that it did not find Mother's testimony in that regard credible. We will not revisit that assessment. *See In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563. We conclude that the evidence and reasonable inferences to be drawn therefrom support the trial court's finding that Father was the perpetrator of the molestations upon B.G.

In determining whether the conditions that led to a child's placement outside the parent's home will likely be remedied, the trial court should assess the parent's ability to care for the child as of the date of the termination proceeding and take into account any evidence of changed conditions. *See In re A.H.*, 832 N.E.2d 563; *In re K.S.*, 750 N.E.2d 832 (Ind. Ct. App. 2001). The trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect, deprivation, or abuse of the child. *In re A.H.*, 832 N.E.2d 563. Proceeding on the assumption that Father did indeed engage in severe, serial molestations of B.G. over a period of time, Father's denial of responsibility and refusal to seek treatment for his abusive behavior renders the risk of future molestations of B.G. and L.G. unacceptably high in the event they are returned to his custody. This constitutes clear and convincing

evidence that there is a reasonable probability that the conditions resulting in the children's removal from Father's home still exist and will not be remedied.

The only other required element challenged by Father was that the evidence was not sufficient to prove that maintenance of the parent-child relationship poses a threat to his children's well-being. Because we have concluded there was sufficient evidence to prove a reasonable probability that the conditions resulting in B.G.'s and L.G.'s removal from Father's home will not be remedied, we need not determine "whether the continuation of the parent-child relationship poses a threat to the well-being of the child" within the meaning of I.C. § 31-35-2-4(b)(2)(B)(ii). *See In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied* (because the elements of I.C. § 31-35-2-4(b)(2)(B) are set forth in the disjunctive, the State need prove only one of the two).

Judgment affirmed.

ROBB, J., and MATHIAS, J., concur.